

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 217 (Second Edition)

SHORT TITLE: Criminal Law/Procedure Amendments.

SPONSOR(S): Representatives Faircloth and Stam

FISCAL IMPACT					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Administrative Office of the Courts, Office of Indigent Defense Services, Department of Public Safety					
EFFECTIVE DATE October 1, 2013 for Sections 1 and 3. December 1, 2013 for Sections 2 and 4.					
TECHNICAL CONSIDERATIONS:					
Yes - See Technical Considerations Section					

FISCAL SUMMARY:

The Fiscal Research Division cannot estimate potential costs at this time.

BILL SUMMARY:

Section 1 of this bill amends existing G.S. 7A-27, Appeals of right from the courts of the trial division, to add a new subsection (c1) which provides an appeal of right to the Court of Appeals for any final judgment in District Court that revokes probation or imposes special probation. Currently, a probation violation or revocation in District Court may be appealed to the Superior Court before being heard by the Court of Appeals. This section is effective October 1, 2013.

Section 2 amends G.S. 15A-1335, Resentencing after appellate review, to clarify that this section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated. This section is effective December 1, 2013.

Section 3 repeals G.S. 15A-1347, Appeal from revocation of probation or imposition of special probation upon violation. This section is effective October 1, 2013.

Section 4 amends G.S. 7B-2200, Transfer of juveniles to superior court, to allow that the District Court shall transfer the case to the Superior Court for trial upon motion of the prosecutor, the juvenile's attorney, or upon the court's own motion if the juvenile was 15 years of age or older at the time of the alleged offense, if the alleged felony constitutes a Class B1 through Class B2 felony, and if the court finds probable cause. This section is effective December 1, 2013.

Section 5 directs the NC Courts Commission to study various areas of the current court practice and structure and to report its findings and recommendations to the General Assembly by April 1, 2014.

Section 6 authorizes a subcommittee of the House Committee on Judiciary to study the issue of the transfer of juvenile cases to superior court for trial as adults and to recommend legislation for consideration in the 2014 Regular Session.

ASSUMPTIONS AND METHODOLOGY:

Section 1

The Fiscal Research Division is unable to estimate if additional Court of Appeals judges and staff would be necessary to handle the increased number of probation cases eligible for appeal directly to the Court of Appeals from District Court under Section 1 of this bill. Section 1 provides an appeal of right to the Court of Appeals for any final judgment in District Court that revokes probation or imposes special probation. Currently, a probation violation or revocation in District Court must be appealed to the Superior Court before being heard by the Court of Appeals.

The Administrative Office of the Courts (AOC) does not currently collect information about probation violation appeals cases with sufficient detail to provide an estimate of the number of filings that would increase at the Court of Appeals.

AOC estimates that if the increase in appeals filings at the Court of Appeals were sufficient to lead to additional staff need in the Court of Appeals, a minimum of three judges and their accompanying support staff (one executive assistant and two research assistants per judge) would be required. Such an expansion would cost \$1,327,425 (\$1,254,198 recurring, \$73,227 non-recurring) in FY 2014-15 and \$1,254,198 recurring annually thereafter. The cost for these positions would accrue in the following fiscal year because full impact would take several months to accumulate after the effective date of this section of the bill. The addition of three additional judges and staff will require additional space within the Court of Appeals building. There are three ways that the Court could achieve this space. First, the additional space could be leased in the Raleigh area. The average annual statewide lease space cost per square foot for office space is approximately \$13.06. Second, the court could renovate the existing building to place additional staff. Such a renovation could trigger a requirement to bring existing facilities up to current Building Code standards. Finally, additional space could be found within existing State facilities.

The Office of Indigent Defense Services (IDS) estimates that the changes made in Section 1 of this bill may increase the number of probation violation appeals in the Court of Appeals. These appeals would be handled by the Office of Appellate Defender, but IDS is unable to estimate the fiscal impact of this caseload increase at this time. IDS estimates that misdemeanor and felony probation violation appeal cases would require eight to twelve attorney hours, so each new direct appeal handled by an assigned appellate attorney would cost IDS between \$480 and \$720. Eliminating the interim appeal to Superior Court would decrease the workload in public defender offices because appeals to the Appellate Division are handled by the Office of Appellate Defender rather than public defender offices. Similarly, contractors and Private Appointed Counsel (PAC) attorneys also generally do not handle appeals to the Appellate Division. Eliminating the interim appeal to Superior Court would decrease the contractual workload and save IDS \$314.52 per case. Eliminating the interim appeal to Superior Court would decrease the PAC workload and save IDS \$188 for each misdemeanor probation violation appeal that is resolved without a trial and \$227 for each misdemeanor probation violation appeal that is resolved after a trial. IDS estimates that the cost increases at the Appellate Defender level would offset savings at the Superior Court level.

Section 2

Section 2 amends G.S. 15A-1335 to clarify that this section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated. The Sentencing and Policy Advisory Commission (SPAC) estimates that if G.S. 15A-1335 is amended, impact would result if the court increased the sentence for any of the offenders who succeed in having a plea of guilty vacated. This impact would be applicable to all convictions regardless of the offense severity or prior record level. In FY 2011-12, the court imposed 10,605 active sentences for felony convictions. Of those 10,605 active sentences, 96% (or 10,163) resulted from the defendant pleading guilty. It is not known how many of those 10,163 sentences were set aside after appellate review. It is also not known for how many of those offenders whose sentences were set aside the court would choose to increase the sentence length or by how much the sentence would increase. Section 2 of this bill could affect convictions originally sentenced in the mitigated range, which may have their sentence increased by up to 63% (to the top of the aggravated range). Convictions originally sentenced in the presumptive range may have their sentence increased by up to 50% (to the top of the aggravated range). Convictions originally sentenced in the aggravated range may have their sentence increased by up to 25% (to the top of the aggravated range). These potential increases in the sentence length assume that the judge is not bound by the original range. This estimate is effective for resentencing hearings held on or after December 1, 2013.

AOC does not anticipate any workload or fiscal impact to the court system from this section.

Section 3

The Fiscal Research Division does not anticipate any additional costs related to Section 3, which repeals G.S. 15A-1347.

Section 4

The Fiscal Research Division is unable to estimate any change in incarceration costs under Section 4 of this bill. Section 4 requires that a District Court shall transfer the case to Superior Court for trial upon motion of the prosecutor, the juvenile's attorney, or upon the court's own motion if the offender was 15 years of age or older at the time of the alleged offense, if the alleged felony constitutes a Class B1 through Class B2 felony, and if the court finds probable cause.

AOC estimates that caseload transfers from District Court to Superior Court under this section would be negligible. Currently a judge may rule at his or her discretion if a prosecutor files a motion to transfer a case to Superior Court in cases involving a juvenile defendant with a Class B1 through Class B2 felony offense. This bill would require a judge to grant the transfer if the prosecutor makes the motion and if the judge has found probable cause for the offense. While this could result in an increase in the number of cases that are transferred to Superior Court, AOC estimates that this additional transfer of work would not significantly impact judicial resources statewide.

IDS estimates that this change would increase the agency's per case costs from the cost that would have been incurred in Juvenile Court after the probable cause hearing to the cost of a Superior Court felony. While public defenders would incur no additional costs, IDS estimates that the cost for PAC would increase between \$273 and \$681 in non-trial cases and between \$1,535 and \$5,684 in trial cases. Table 1 illustrates these differences.

Table 1: IDS Cost Increase Estimates

Felony Class	PAC Cost in Juvenile Court*	PAC Cost in Superior Court (non-trial)**	PAC Per Case Cost Increase (non-trial)	PAC Cost in Superior Court (trial)	PAC Per Case Cost Increase (trial)
Class B1/B2	\$913	\$1,594	\$681	\$6,597	\$5,684

* Some of these Juvenile Court costs will still need to be paid because the case will still be heard in Juvenile Court through the probable cause hearing.

** PAC per case cost estimates are based on FY09-10 data.

The Department of Public Safety (DPS) reports that there were four juveniles aged 15 or older who had a most serious offense charge of a Class B1 or Class B2 felony whose cases were transferred to Superior Court for adjudication in calendar year 2012. SPAC does not have data on the number of juvenile petitions filed for a Class B1 or Class B2 felony. Data are available on the dispositions imposed for juveniles adjudicated delinquent during FY 2011-12 with a Class B1 or Class B2 felony.¹ This data does not include juvenile petitions for a Class B1 or Class B2 felony where the juvenile was adjudicated delinquent for a less serious offense. In FY 2011-12, there were a total of 6,384 juveniles whose cases were adjudicated delinquent and disposed. The proposed statute would require the court, upon motion of the prosecutor, to transfer juveniles 15 years of age or

¹ These data are obtained from the Department of Public Safety's Division of Juvenile Justice as part of the juvenile justice resource projections process. There are limitations to these data since a portion of the petitions with a Class B1 or Class B2 felony would have been adjudicated for a less serious offense (Class C through Class I felony or Class A1 through Class 3 misdemeanor) than the original offense class (Class B1 or Class B2) filed.

older at the time the juvenile committed a Class B1 through Class B2 offense to the Superior Court for adjudication. Of those 6,384 dispositions, 38 (0.6%) were Class B1 or Class B2 felonies under the Juvenile Disposition Chart. Of the 38 violent offenses, ten were committed by a juvenile 15 years of age or older. Two of the ten juveniles aged 15 years or older received a Level 3 or YDC commitment with the rest receiving a Level 1 (community) or Level 2 (intermediate) disposition. See Table 2 for specific offense class and Level 3 (YDC commitment) information.

Table 2: Juvenile Dispositions, Class B1-B2 Felonies, FY 2011-12

Most Serious Adjudicated Offense Class	Juvenile Dispositions (Aged 15 years and older)	Level 3 (YDC Commitment)
Class B1	9	1
Class B2	1	1
Total Violent Offenses	10	2

Source: NC Sentencing and Policy Advisory Commission, FY 2011-12 Juvenile Disposition Simulation Data

Juvenile Impact

It is not known if all of these 101 juveniles would be transferred from the juvenile system to the adult system as a result of the proposed change. It is also not known how many juveniles would be transferred from the juvenile system to the adult system under current law. If any of the juveniles were transferred to the adult system, there would be both potential savings and additional costs to the juvenile justice system. There would be a potential savings to the juvenile justice system due to the decrease in YDC beds needed and fewer juveniles requiring supervision in the community. However, juveniles transferred from the juvenile system to adult court tend to have substantially longer average lengths of stay at detention centers awaiting trial compared to juveniles processed through the juvenile justice system. This could result in an additional cost to the juvenile system due to increases in detention center admissions and a longer length of stay once admitted. This analysis does not account for any potential impact on detention center admissions and the length of stay at those facilities.

Adult Impact

It is not known how many of these ten juveniles would be transferred to the adult system as a result of the proposed change. Impact would occur if any of these juvenile dispositions become adult convictions. Using threshold data, prison bed estimates for Class B1 and Class B2 felonies are provided assuming that all ten juveniles would be transferred to the adult system.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 and Class B2 offenders are required to receive an active sentence. Table 3 shows the average estimated time served for an offender convicted of a Class B1 or Class B2 offense and serving an active sentence with no prior record level points in FY 2011-12. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1 or Class B2 felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Table 3: Average Estimated Time Served For Offender with No Prior Record Level Points

Offense Class	Average Estimated Time (In Months)
Class B1	214
Class B2	151

Source: NC Sentencing and Policy Advisory Commission

SPAC bases the above threshold impact upon an overall assumption that a juvenile adjudicated delinquent in the juvenile system would be convicted of the same offense class in the adult criminal justice system and that all juveniles transferred to the adult system would have no prior record level points.

Because the population would be spread over multiple jurisdictions and years, the Department of Public Safety (DPS) expects the number of offenders added to the post release supervision caseloads would be too small each year to impact officer needs.

TECHNICAL CONSIDERATIONS:

Section 7

AOC recommends a change in the wording of the first sentence of this section from “probation revocation hearings” and “revocation hearings” to “judgments entered in probation matters.” AOC also recommends that “N.C. Court of Appeals” be changed to “appellate division.”

SOURCES OF DATA:

Fiscal Research Division, Administrative Office of the Courts, Office of Indigent Defense Services, Sentencing and Policy Advisory Commission, Department of Public Safety, Moodys.com

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